

RECORDING REQUESTED BY:
United States Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

WHEN RECORDED, MAIL TO:
Aspire Schools
1001 22nd Avenue, Suite 300
Oakland, CA 94606

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Re: Assessor's Parcel Number 041-4056-003

~~Aspire Schools~~

This Covenant and Agreement ("Covenant") is made by Aspire Public Schools (Aspire) and College for Certain, LLC (CFC) (the "Covenantor"), the current owner of that certain property situated at 1009 66th Avenue in the City of Oakland, County of Alameda, State of California, (the Site; see Figures 1 and 2) described in Schedule 1 (the legal description of the Site), which is attached and incorporated by this reference (the "Property"), for the Alameda County Environmental Health (the "Department"). This Covenant is made pursuant to Civil Code section 1471, and is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor, and those entitled to enforce this Covenant, including the Department and the United States Environmental Protection Agency Region 9 ("EPA"), therefore intend that the use of the Property be restricted as set forth in this Covenant, in order to protect human health and safety and the environment, and that the provisions of this Covenant shall also be for the benefit of, and enforceable by the Department, and also by the

EPA as a third-party beneficiary.

ARTICLE I

STATEMENT OF FACTS

1.01. History. The site area is 2.51 acres and is located on the western side of 66th Avenue between East 14th Street (to the north) and San Leandro Street (to the south). The Site is zoned for commercial use as a charter school. The area around the Site is developed with a mixture of commercial, industrial, government, and multi-family residential buildings. The Site is bounded by a residential development to the north, Oakland Fire Department Station Number 2 to the east across 66th Avenue, Fruitvale Business Center to the south, and Northstar International Container Freight and Container Consolidation Services to the west (see Figures 1 and 2).

The structures formally associated with the Pacific Electric Motors (and infrastructure) have all been demolished. ~~and the Site has been redeveloped into the Golden State College Preparatory Academy.~~ Areas of polychlorinated biphenyl (PCB)-containing soil have been remediated in accordance with the Revised Corrective Action Plan, Proposed Aspire High School Site, 1009 66th Avenue, Oakland, California (Fuel Leak Case No. RO0000411) submitted to the Department on July 17, 2009, the Self-Implementing Cleanup Plan (SICP) submitted to the EPA on October 23, 2009, the response letter from EPA dated November 13, 2009, and LFR Inc.'s (LFR's) response letters to EPA dated November 18, 2009 and January 14, 2010.

The Site has been redeveloped into the Aspire Golden State College Preparatory Academy, which serves grades 6 through 12 and has capacity for 570 students; the school

opened in August 2011 (see Figure 3). The school occupies approximately 1.4 acres and consists of:

- 3 two-story buildings (approximately 41,430 square feet total including 24 full-sized classrooms, 4 labs, 3 girls and 3 boys restrooms, and 4 staff restrooms);
- An asphalt-paved parking area with access via two driveways on 66th Avenue (one for ingress and one for egress);
- An asphalt-paved area for basketball; and
- Several planter areas.

As part of the redevelopment of the Site, the ground surface comprised of roadways, sidewalks, parking areas, buildings, and planter areas is serving as a cap to mitigate potential exposure to remaining PCB-containing soil at the Site.

1.02. Known or Potentially Chemical-Impacted Soil. Prior to redeveloping the Site, remedial tasks were conducted at the Site to remove soil containing elevated concentrations of lead, arsenic, PCBs, benzene, and total petroleum hydrocarbons as gasoline. The removal action for the PCB-containing soil was completed in accordance with 40 Code of Federal Regulations (CFR) §761.125(c)(5) that describes the implementation of the Toxic Substances Control Act (TSCA) SICP. Details regarding the removal action are presented in the report entitled: “Revised Draft PCB Cleanup Completion Report, College for Certain, 1009 66th Avenue, Oakland, California” dated, October 15, 2013.

~~Although~~ The remedial actions were highly effective in removing the affected soil, ~~the~~ The

analytical results for 12 confirmation soil samples collected as part of the removal action for the PCB affected soil -indicated that PCBs were present at concentrations greater than the cleanup goal of 0.130 milligrams per kilogram (mg/kg) established for the Site (see Figures 2 and 3).

Due to geotechnical work conducted to strengthen site soils for the redevelopment of the Site, the soil currently in those 12 locations may have been moved. Thus the PCB containing soil may be at locations that are not represented by the samples collected in those locations before the geotechnical and grading work. The geotechnical work to strengthen the soil included the cement-treatment of the upper 18 inches of soil across the Site. This may have resulted in the movement of soil at the 12 locations where PCBs were detected at concentrations greater than the cleanup goal. The following table summarizes the concentrations of PCBs detected above the cleanup goal and the approximate depths at which the samples were collected beneath the TSCA cap.

**Summary of PCBs in Soil at Concentration Greater than the Cleanup Goal
Golden State College Preparatory Academy - Aspire Public Schools
1009 66th Avenue, Oakland, California**

Sample ID	Depth below TSCA Cap-current ground surface (in feet)	PCBs (mg/kg)
50' North 1 - SDWALL1'	1.0	0.135
50' North 2 - SDWALL1'	1.3	0.160
50' North 3 - SDWALL1'	1.4	0.250
25' North 7 - SDWALL1'	1.3	0.330
S1-SDWALL 2' R1	1.2	0.230
NE-CORNER 3' R1	2.2	0.270
W1-SDWALL 2'	3.4	0.420
W2-SDWALL 2'	4.0	2.500
SW-Bottom 6' R2	3.9	0.370
PD-1	1.3	0.372
PD-2	1.4	0.940
PD-6	1.2	0.535

Note: The depth of the samples below the TSCA cap was established by subtracting the sample elevation from the finished floor elevation of the top of the TSCA cap.

To mitigate the potential human health risk posed by the PCBs in soil, a surface cap was constructed at the Site consisting of the following (see Figure 3):

Trash Enclosure Area

- Native soil
- 18 inches of cement-treated native soil
- 6 inches of imported aggregate base rock
- 6 inches of Portland cement concrete

Pedestrian Walkway Areas – Concrete

- Native soil
- 18 inches of cement-treated native soil
- 4 inches of imported aggregate base rock
- 4 inches of Portland cement concrete

Vehicle Traffic Areas

- Native soil

- 18 inches of cement-treated native soil
- 10 inches of imported aggregate base rock
- 3 inches of asphalt concrete

Parking Areas

- Native soil
- 18 inches of cement-treated native soil
- 8 inches of imported aggregate base rock
- 2.5 inches of asphalt concrete

Pedestrian Walkway Areas – Asphalt

- Native soil
- 18 inches of cement-treated native soil
- 4 inches of imported aggregate base rock
- 2 inches of asphalt concrete

Landscaped Areas

- Native soil
- 18 inches of cement-treated native soil
- 10 inches of native soil
- 12 inches of imported top soil

The surface cap is subject to the Operation and Maintenance Plan for Cap Mitigation Measures dated October 15, 2013 (O&M Plan) that is included as Schedule 2 to this document. The O&M Plan includes procedures for:

1. Long-term operation, maintenance, and monitoring (inspection) of the engineering controls, including maintenance and repair of the cap (including all of its components) in perpetuity; and
2. Management of soils containing PCBs and other contaminants at the Site.

ARTICLE II

DEFINITIONS

2.01. Department. "Department" means the Alameda County Environmental Health and its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any persons or entities entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.04. Improvements. "Improvements" shall mean all buildings, roads, driveways, walkways, landscaped areas and paved parking areas, constructed or placed upon any portion of the Property.

2.05. EPA. "EPA" shall mean the United States Environmental Protection Agency, Region 9.

ARTICLE III

GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively, "Restrictions"), upon and subject to which the Property and every portion of it shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every one of the Restrictions: (a) shall run with the land pursuant to Health and Safety Code sections 25202.5 and 25202.6 and Civil Code section 1471; (b) shall inure to the benefit of and pass with each and every portion of the Property; (c) shall apply to and bind the respective successors in interest to the Property; (d) are for the benefit of, and shall be enforceable by the Department and the EPA; and (e) are imposed upon the entire Property.

3.02. Binding upon Owners/Occupants. Pursuant to Health and Safety Code section 25202.5(b), this Covenant shall be binding upon all of the Owners, their heirs, successors, and assignees, and the agents, employees, and lessees of the Owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive Owners of the Property are expressly bound by this covenant for the benefit of the Department. The provisions of this Covenant shall also be for the benefit of, and enforceable by, the EPA as a third-party beneficiary.

3.03. Written Notice of Hazardous Substance Release. The Owner shall, prior to the sale, lease, or rental of the Property, give written notice that hazardous substances have been located on or beneath the Property, pursuant to Health and Safety Code section 25359.7. Such written notice shall include a copy of this Covenant.

3.04. Conveyance of Property. Each Owner shall provide notice to the Department and the EPA not later than 30 days after conveyance of any ownership interest in the Property (except for mortgages, liens, and other non-possessory encumbrances). Such notice shall include the name and address of any new Owner, describe the property owned by the new Owner and identify the new Owner as a person to whom notices should be delivered pursuant to Section 7.4 of this Covenant. The Department or the EPA shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect such proposed conveyance, except as otherwise provided by law, administrative order, or specific provision of this Covenant.

ARTICLE IV
RESTRICTIONS

4.01. Description of Land use Restrictions.

As presented in Section 1.01, PCBs have been detected in 12 soil samples collected at the Site at concentrations greater than the cleanup goal of 0.130 mg/kg. The locations of these samples are illustrated on Figure 3. As described above, due to geotechnical work conducted to strengthen site soils for the redevelopment of the Site, the soil currently in those 12 locations may have been moved. Thus the PCB containing soil may be at locations that are not represented by the samples collected in those locations before the geotechnical and grading work. Due to the presence of soil containing PCBs, the following land use restrictions are in place for the burdened property:

1. Development of the Burdened Property shall be restricted to industrial, commercial, or office space [\(which includes school facilities\)](#).
2. No residence for human habitation shall be permitted on the Burdened Property.
3. No hospitals shall be permitted on the Burdened Property.
4. No Owners or Occupants of the Property or any portion thereof shall conduct any excavation work on the Property, unless expressly permitted in writing by the County and in accordance with the Soil Management Plan (SMP). Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or his agent, or successor owners or occupants, in accordance with the SMP and all applicable provisions of local, state, and federal law.
5. All uses and development of the Burdened Property shall be consistent with the SMP, which is hereby incorporated by reference.
6. No Owners or Occupants of the Burdened Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including but not limited to domestic, potable, irrigation, or industrial uses, unless expressly permitted in writing by the County. Further restrictions for well installation are described in the SMP.

7. The Covenantor agrees that the County, and/or any persons acting pursuant to County cleanup orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.
8. No Owner or Occupant of the Burdened Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Burdened Property.
9. All use and development of the Burdened Property shall preserve the integrity of any capped areas.
10. No Owner or User of the Burdened Property shall grow fruits or vegetables for consumption using site soils. Gardening on the Burdened Property shall only be permitted using imported soil within raised beds that do not allow direct contact between plant roots and the underlying site soil.
11. Specification that any changes to land use, movement of contaminated soils, or discovery of new contamination requires additional approval from EPA.
12. The Cap must be inspected, operated, and maintained in perpetuity and in accordance with the O&M Plan (Schedule 2). Modifications to the Cap will require EPA approval before making modifications to the Cap.
13. Disturbance to the soil that is present beneath the Cap or disturbance to the landscaping that is part of the cap must be handled in accordance with the SMP. The SMP is included as part of the O&M Plan (Schedule 2).

4.02. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant, as deemed necessary by the Department in order to protect the public health and safety and the environment. Individuals that are to access the Property will be subject to security clearance requirements (including but not limited to Department of Justice fingerprinting, also known as “Livescan”) as stated in the State of California Education Code Sections 44237 and 45125.1.

ARTICLE V

ENFORCEMENT

5.01. Enforcement. Failure of the Owner to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department, by reason of this Covenant, to require that the Owner modify or remove any Improvements. Violation of this Covenant shall be grounds for the Department or the EPA to file civil ~~and/or criminal~~ actions against the Owner as provided by law.

ARTICLE VI

VARIANCE, TERMINATION, AND TERM

6.01. Variance. Any Owner, or with the Owner's written consent, any Occupant of the Property or any portion of the Property may apply to the Department for a written variance from the provisions of this Covenant. The application shall be made in accordance with Health and Safety Code section 25202.6 and may only be made after written notice to the EPA and approval of the application by the EPA.

6.02. Termination. Any Owner, or with the Owner's written consent, any Occupant of the Property or any portion of the Property, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. The application shall be made in accordance with Health and Safety Code section 25202.6 and may only be made after written notice to the EPA and approval of the application by the EPA

6.03. Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion of it to the general public or anyone else for any purpose.

7.02. Department References. All references to the Department or the EPA include successor agencies or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, Schedules and Appendices, in the County of Alameda. Covenantor shall provide a copy of the recorded Covenant to EPA.

7.04. Notices. Whenever any person gives or serves any notice ("Notice" means any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

[College for Certain Aspire Public Schools](#)

1001 22nd Avenue, Suite 300

Oakland, CA 94606

To Department:

Alameda County Environmental Health

1131 Harbor Bay Parkway

Alameda, CA 94502-6577

To EPA:
United States Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105
Attention: PCB Coordinator

Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth in this document is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06. Non-impairment of Mortgage Liens. No breach of this Covenant shall affect, impair, defeat or render invalid the lien or charge of any mortgage or deed of trust made in good faith and for value encumbering the Property or any portion thereof, regardless of the respective dates of recordation. This Covenant and the Restrictions shall be binding upon any Owner whose title is derived through foreclosure or trustee's sale or conveyance in lieu thereof.

IN WITNESS WHEREOF, the Covenantor has executed this Covenant as of [Date]

Covenantor:

By: _____

Name: _____

Title: _____

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
) SS.
COUNTY OF Alameda)

On _____, 2013, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

[AFFIX LEGIBLE NOTARY SEAL]

SCHEDULE 1

LEGAL DESCRIPTION OF THE PROPERTY

That certain real property situated in the City of Oakland, County of Alameda, State of California, and more particularly described in the attached legal description.

SCHEDULE 2

**OPERATION AND MAINTENANCE PLAN FOR THE SURFACE CAP
INSTALLED AT THE FORMER PACIFIC ELECTRIC MOTORS SITE
LOCATED AT 1009 66th AVENUE IN OAKLAND, CA**